



December 6, 2022

Jim Craig
Senior Deputy, Director of Health Protection
Mississippi State Department of Health
PO Box 1700
Jackson, MS 39215

DELIVERED ELECTRONICALLY TO: Cassandra.Walter@msdh.ms.gov

RE: ATA COMMENTS ON PROPOSED RULE 8.1.5

Dear Mississippi Department of Health,

On behalf of ATA Action, I am writing in opposition to provisions of Proposed Rule 8.1.5 related to telehealth practices for occupational therapists.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

ATA Action is appreciative of the Department of Health's (the Department's) efforts to clarify telehealth care for occupational therapy patients in Mississippi. Current regulations governing occupational therapists and their assistants include no telehealth provisions, making the addition of this rule a step forward for healthcare in Mississippi. Providing the necessary regulatory clarity for occupational therapists will help guide providers, expand patient choice and flexibility, and create better healthcare outcomes for Mississippi patients. ATA Action also agrees with the Department that telehealth must meet the standard of care, just like in-person care delivery, and that patient consent to telehealth treatment is necessary for the provision of telehealth services.

While ATA Action commends the Department for this step forward, there are some sections of the proposed rule which the Department should reconsider before implementation in order to create the best possible outcomes for Mississippi patients. In particular, it is our belief that the proposed regulation's technology and patient relationship requirements may conflict with current Mississippi law, and that the rule places unnecessary documentation requirements on telehealth providers which are not requirements of in-person providers. We would appreciate the Department's consideration of these issues and revision to the proposed rules.

ATA ACTION

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First, ATA Action believes the proposed rules may conflict with the Mississippi Public Health code, Chapter 127 addressing “Telemedicine Services” [Miss. Code Ann. § 41-127-1] which states,

Subject to the limitations of the license under which the individual is practicing, a health care practitioner licensed in this state may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient *either* in person *or* by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings. [emphasis added]

Note that the Public Health code (which covers Occupational Therapists) gives practitioners a choice for establishing a patient relationship for providing treatment, by either an in person examination or by the use of telehealth technologies, so long as telehealth practice aligns with the standard of care.

The proposed rules appear to conflict with the Public Health law in two places, starting with the paragraph at 8.1.5 wherein the proposed rule states, “Occupational therapy practitioners must have direct contact with the client for the duration of the intervention session via telehealth using synchronous audiovisual technology.” However, the aforementioned Public Health code states that practitioners can conduct an examination and make treatment recommendations “via electronic means” without qualifying whether those means are synchronous or asynchronous. Indeed, by using the language “use of instrumentation and diagnostic equipment through which images and medical records may be transmitted,” the Public Health law appears to not prohibit providers from conducting entirely asynchronous telehealth care, such as remote patient monitoring, store and forward transfer of information, and remote treatment diagnosis and planning.

Next, subsection 8.1.5(1)(a) of the proposed rules states that an occupational therapist can establish a patient relationship via telehealth only using four methods: in person examination, through a personal relationship, a limited referral, or while on-call. However, the Public Health code already provides two methods of establishing a patient relationship, “either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically.” Placing additional requirements on establishing a patient relationship solely through telehealth care appears to contravene the intent and text of the Public Health statute. ATA Action recognizes that the Department can set “limitations of the license under which the individual is practicing” but it is not clear, from either the Public Health law nor the Mississippi Occupational Therapy Practice Act, what additional statutory authority suggests the Department should place further limits on establishing patient relationships via telehealth in possible contradiction to the Public Health law itself.

The Department should also take note of the Federation of State Medical Boards (“FSMB”) recently revised telemedicine guidelines on establishing patient relationships via telehealth. The updated guidelines propose policies for lawmakers and state medical boards that enable the broad use of telehealth technologies while prioritizing patient safety. The FSMB guidelines state a “physician-patient relationship may be established via either synchronous or asynchronous telemedicine technologies without any



requirement of a prior in-person meeting, so long as the standard of care is met.”¹ ATA Action recommends aligning with this best practice guidance.

Furthermore, ATA Action believes that so long as the practitioner obtains the patient’s consent for the use of telemedicine services, verifies the patient’s identity, and discloses his or her own identity and credentials, providers should be able to use synchronous or asynchronous technologies to establish a provider-patient relationship. Keeping these restrictive practices in the rule would harm most pertinently rural and underserved communities, as many individuals in these communities do not have access to the high-speed broadband capabilities necessary to operate real-time audiovisual technologies.

It is also unclear what the clinical justification is for some of the proposed patient relationship exceptions under 8.1.5(1)(a)(i)-(iv); is it certain that a personal relationship with a patient or a cross-coverage arrangement ensures a higher standard of care relative to patient relationships established extemporaneously? ATA Action is skeptical that any studies or clinical evidence suggest these restrictions improve patient safety above-and-beyond the requirement of every telehealth provider to meet the standard of care.

Regarding the modalities which the Department should approve for use in the delivery of telehealth services, ATA Action supports the adoption of technology-neutral telemedicine policies that enable practitioners to utilize synchronous and asynchronous technologies in the delivery of care rather than limiting care delivery to “synchronous audiovisual technology.” ATA Action maintains that states should not restrict the modalities which practitioners may use when providing care to patients, permitting licensed health care professionals to determine which technologies are sufficient to meet the standard of care for the condition presented by the patient. The committee should expand the modalities permitted for telehealth utilization by occupational therapy providers to be technology neutral to best serve the needs of patients.

The Department should also clarify the final sentence of the rule’s first paragraph which states that “Other telecommunications or information technology may be used to aid in the intervention session but may not be the primary means of contact or communication.” There is no further elaboration on what constitutes primary contact or communication, creating confusion for patients and providers on what level of audio-only, text, email or other communication would be permissible under the rule.

Finally, ATA Action is concerned with the documentation requirements in section seven of the proposed rule. While there is no doubt that these requirements are well intentioned, it is troubling that the Department would place these requirements only on telehealth providers. If the Department wishes for occupational therapists to keep written records of care then this rule should be applied to all occupational therapy providers and not just providers who provide care via telehealth. Placing these documentation requirements on only telehealth providers could also discourage providers from offering telehealth care due to the administrative cost and burden that the requirements create. This creates the unintended consequence of limiting patient choice by depriving them of the flexibility and advantages that a robust network of telehealth options can provide.

¹ The Appropriate Use of Telemedicine Technologies in the Practice of Medicine, FSMB, April 2022.
<https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf>



Thank you for your support for telehealth. We encourage you and your colleagues to consider changes to this rule to address the concerns we raised above. This rule remains a positive step in the right direction for occupational therapy patients in Mississippi by expanding their healthcare flexibility. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in Mississippi. If you have any questions or would like to engage in additional discussion regarding the telehealth industry's perspective, please contact me at kzebley@ataaction.org.

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", is written over a faint, light-colored signature line.

Kyle Zebley
Executive Director
ATA Action